

Update On Safe Dig Law

March 11, 2016

February 11th the Montana PSC met with PHMSA where they audited the Montana Safe Dig Law using the seven audit points that I have included in your handout. Several of the stakeholders were present at that meeting. PHMSA answered many questions from those in attendance. Although we do not have the final report from PHMSA we all understand Montana's Safe Dig law is not compliant in several areas, but most notably in the area of enforcement.

The stakeholders met again on February 26th and started discussions on potential statute changes. Twenty-three people signed in at the meeting.

To assure we stay on track, goals were set early in the meeting.

- **Achieve consensus**
- Focus on becoming compliant. Which translates into making certain that all gas and liquid lines which are under the jurisdiction of PHMSA and the Montana PSC are made safe and protected under the Montana Safe Digging rules.
- Then focus on increasing excavation safety around all utilities which in turn will help maintain the integrity of our infrastructure.

We all agreed that we needed to focus on enforcement. There was a **consensus** that the best manner to deal with this deficiency is to establish an unpaid review board under the Department of Labor. The Department of Labor would work with the board, the board would likely engage where there is damage and a dispute regarding no call for locates, no locate, inaccurate locates made or reckless excavation. The magnitude of work will depend on how the stakeholders agree, and the law is adopted, regarding a matrix of outcomes and fines based on specific individual damage or locate events.

We all agreed that building a matrix that makes certain the penalties for damaged utilities are consistent, proper for the incident, flexible enough to allow for human error vs bad behavior and with enough direction to keep safe digging issues out of the courts is very important to this process and needs a thorough study and comprehensive discussion at a future meeting.

Another noncompliant topic was damage reporting. This topic, like the violation matrix that I spoke about earlier, will take some further discussion at a future meeting. Some of the conversation concerning reporting was in the flexibility of reporting damages and

the type of information that would be required when reporting. It was mentioned that if penalties for dig law violations were complaint driven, then this damage reporting could be strictly for analysis and potentially could require less excavator specific information. The **consensus** is that we will require, at a minimum, what PHMSA is recommending.

The first meeting was a good start, we have some hard work ahead of us, but the stakeholders are committed and therefore I feel confident we can reach a **consensus** on a bill that will improve the safety of excavators, become compliant and better protect our infrastructure.

Our next meeting is scheduled for April 1st at 10:00 am at the Montana Dakota Utilities office, 5181 Southgate Drive, in Billings. We will try to reach out to more stakeholders with the announcement of this meeting.

Criteria for Evaluating State DP Enforcement Programs

- 1) Does the state have enforcement authority (with civil penalties)?
- 2) Is there a designated enforcement body?
- 3) Is the state using its authority and making enforcement records available to the public?
- 4) Does the state have a reliable means of learning about damages?
- 5) Does the state have damage investigation practices that are adequate to determine the at-fault party when a damage occurs?
- 6) At a minimum, does the state require:
 - a) Excavators must call 811 before digging
 - b) Excavators must "respect the marks"
 - c) If damage to a pipeline occurs...
 - i) Excavator must report damage to operator at earliest practical moment
 - ii) If release occurs, excavator must call 911
- 7) Are exemptions from the DP law limited? Written justification of exemptions is required.